IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6378 of 2007()

CR.NO.124/2007 OF AMBALAVAYAL POLICE STATION, WAYANAD

: PETITIONERS

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1. T.B.SANU, S/O.BHASKARAN, PUTTOTTU VEEDU, NATHAMKUNI PO, PUTTADU, WAYANAD.

2. V.M.SHAJI, S/O.MATHEW, KETTIKOTTIL VEEDU, NATHAMKUNI PO, PUTTADU, WAYANAD.

3. M.K.DASAN, S/O.KUTTAPPU, MANJAMKUZHIL VEEDU, NATHAMKUNI PO, PUTTADU, WAYANAD.

4. UNNIKKANNAN, S/O.K.T.KARUNAKARAN NAIR, KARUNALAYAM, NATHAMKUNI PO, PUTTADU, WAYANAD.

BY ADV. SRI.C.V.MANUVILSAN
SRI.E.C.BINEESH
SRI.P.C.ANIL KUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY S.I. OF POLICE AMBALAVAYAL POLICE STATION, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6378 of 2007

Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Section 379 I.P.C. The crux of the allegations against them is that several trees standing in property acquired by the Government were stealthily cut and removed by the miscreants. In the F.I.R no persons are shown as accused. In the course of investigation, it was realised that the petitioners were guilty of the indiscretion. Accordingly they have been arrayed as accused.

2. The learned counsel for the petitioners submits that the petitioners are leaders who had demanded that a bridge be constructed for the use of the members of the public. Some of the demonstrators had cut some trees and chose to build a bridge. Totally false allegations are now being raised against the petitioners, it is contended. In these circumstances, directions under Section 438 Cr.P.C may be issued in favour of the petitioners. The total value of the trees cut and removed would not exceed Rs.1,690/-, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is no question of

any bridge in the locality for use by the public. The theory of public demand for a bridge and that the petitioners were bona fide agitating to redress that grievance of the members of the public is all a figment of imagination. There is no scope for such a defence at all, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. The learned Public Prosecutor points out that the complaint is filed by the Government official in charge of the area alleging illicit cutting and removal of a number of trees. The mere fact that 3 of them were used to create access to the house of a local person is no reason to justify the gross act of cutting a number of trees from the property. In any view of the matter, there is no justification in the prayer for anticipatory bail, submits the learned Public Prosecutor .

5. I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that the petitioners must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-